IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1096 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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SARDAR KRUSHINAGAR DANTIWADA AGRICULTURAL UNIVERSITY & 1 - Appellant(s)

Versus

RAMILABEN WD/O. GOVINDPURI SOMPURI GOSWAMI - Defendant(s)

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Appearance :

MR DG CHAUHAN for Appellant(s) : 1 - 2.
MR DC DAVE for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/05/2007

ORAL JUDGMENT

1. Present appeal has been under Section 30 of the Workmen's Compensation Act, 1923 by the appellant- Sardar Krushinagar Dantiwada Agricultural

University and another challenging the judgment and order dated 07.12.2006 passed by the learned Commissioner for Workmen Compensation, Labour Court, Gandhidham – Kutch in Workmen Compensation Application (Fatal) No. 27 of 2005 by which the learned Commissioner has directed the appellants to pay Rs.1,48,200/- towards compensation along with interest at the rate of 12% with effect from 02.11.1996 and 50% penalty.

2. That Govindpuri Sompuri Goswami was serving as daily wager in the fixed salary of Rs.1500/- with the appellants who died on 02.11.1996. That the heirs of the deceased Govindpuri Sompuri Goswami filed Workmen Compensation (Fatal) No. 27 of 2005 before the learned Commissioner for Workmen Compensation, Labour Court, Gandhidham – Kutch for compensation alleging *inter-alia* that the deceased Workman has died on 02.11.1996 while on duty due to heavy work load. The claim application was opposed by the appellants by submitting that the deceased had died by natural death due to disease and continuous ill health; and that there was no connection between the death and the employment. The learned Commissioner for Workmen Compensation by impugned judgment and

order allowed the said application directing the appellants to pay an amount of Rs.1,48,200/- by way of compensation along with interest at the rate of 12 percent per annum and further directed the appellants to pay Rs.74,100/- by way of penalty. The learned Commissioner has also further passed an order directing the appellants to Rs.5000/- towards costs. Being aggrieved and dissatisfied with the impugned judgment and order passed by the learned Commissioner for Workmen Compensation, the appellants have preferred the present First Appeal.

3. This Court directed the Office to notify First Appeal for final hearing and also directed the Registry to call for Record and Proceedings of Workmen Compensation (Fatal) Application No. 27 of 2005 and this Court received the Record and Proceedings. Learned Counsel appearing on behalf of the appellants has also produced typed copies of the relevant documents/ annexures / exhibits before this Court for perusal.

4. Shri D.G.Chauhan, learned Counsel learned Counsel appearing on behalf of the appellants has vehemently submitted that the judgment and order

passed by the learned Commissioner is absolutely erroneous and illegal and contrary to the evidence on record. He has further submitted that the learned Commissioner has erroneously shifted the burden upon the appellants; that the appellants failed to prove that the Workman did not die on account of heavy work load. It is submitted by him that the learned Commissioner has seriously erred in holding that the death of the Workman was caused due to heavy work load during the course of the employment. He has submitted that such a finding is based on no evidence. It is submitted by him that evidence on record clearly establish that the Workman was suffering from disease since long and due to his continuous ill-health, the Workman died. It is also further submitted by him that the Workman was working as a Daily Wager - Field Supervisor and looking to the nature of work there was no question of heavy work load on the deceased Workman. It is further submitted by him that in fact there is no evidence led by the original claimants that the deceased died because of heavy work load and that during the course of employment there was some connection between the death and the employment. Shri Chauhan, learned Advocate appearing on behalf of the appellants has

taken this Court to the various documentary evidence, evidence on record suggesting that in fact deceased was suffering from disease since long and was also on leave earlier due to prolong illness. Shri Chauhan, learned Advocate has also taken this Court to various other documentary evidence. By making above submissions, Shri Chauhan, learned Advocate appearing on behalf of the appellants has requested to allow the present appeal by quashing and setting aside the impugned order passed by the learned Commissioner for Workmen Compensation in Workmen Compensation Application.

5. On the other hand Shri Dhaval Dave, learned Advocate appearing on behalf of the respondent-claimant has tried to support the judgment and order passed by the learned Commissioner for Workmen Compensation and submitted that there is no substantial question of law arises in the present appeal and as the deceased died while on duty due to heavy work load, the judgment and order passed by the learned Commissioner for Workmen Compensation is not required to be interfered with and it is requested to dismiss the present appeal.

6. Heard the learned Advocates appearing on behalf of the respective parties.

7. It is required to be noted that the deceased Workman who was daily wager working as Field Supervisor on fixed salary of Rs. 1500/- has died on 02.11.1996. It is also required to be noted that the application for Compensation was submitted in the year 1998 more particularly, on 07.10.1998 and even the notice for compensation for the first time came to be issued on 05.08.1999 i.e. almost after a period of two years. On going through the Record and Proceedings, relevant documentary evidence and even certificate issued by the Doctor produced by the deceased prior to his death, it appears that the deceased Workman was remaining absent due to his prolong sickness and continuous ill-health. Now considering even the application of the deceased Workman and medical certificate issued by the Doctor produced by the deceased Workmen, the deceased was suffering from prolong illness and sickness even prior to his death. As such no evidence has been led by the claimants to connect death and the employment. There is no evidence on record that the Workman died due to heavy work load. Considering the evidence on

record, the deceased Workman died natural death and/or atleast not due to heavy work load. He was already suffering from disease and was also suffering from illness/sickness prior to his death.

8. Under the circumstances, the learned Commissioner for Workmen Compensation has erred in awarding the compensation by holding that the deceased has died on duty due to heave work load. Such a finding of learned Commissioner is based on no evidence and even contrary to the evidence on record. When the claimants have failed to adduce any evidence to prove that the deceased has died while on duty due to heavy work load, the learned Commissioner for Workman Compensation has materially erred in awarding the compensation for the death of the deceased who has died natural death as he was suffering from illness prior to his death. It is also required to be noted that even the learned Commissioner has also committed an error in shifting the burden upon the appellants to lead the evidence and/or prove that the Workman did not die on account of heavy work load. In fact the burden was upon the claimants to prove that the Workman died on account of heavy work load and there was some connection with the employment. Under

the circumstances, the judgment and order passed by the learned Commissioner for Workmen Compensation cannot be sustained and the same is required to be quashed and set aside.

9. For the reasons stated above, the appeal succeeds. The judgment and award dated 07.12.2006 passed by the learned Commissioner for Workmen Compensation, Labour Court, Gandhidham – Kutch in Workmen Compensation (Fatal) Application No. 27 of 2005 is hereby quashed and set aside. However, there shall be no order as to costs.

[M.R.Shah, J.]

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